

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D'WAYNE CARPENTER,)
)
Petitioner,)
)
v.) Civil Action No. 04CV40043WGY
)
DAVID L. WINN, et al.)
)
Respondent.)
)

SECOND MOTION TO EXTEND TIME IN WHICH TO RESPOND TO PETITION

Now comes the respondent, David L. Winn, Warden, the Federal Medical Center in Devens, Massachusetts (“FMC Devens”),¹ and hereby moves this Court for a second, one month extension of time **up to and including August 16, 2004**, to answer or otherwise respond to plaintiff D’Wayne Carpenter’s habeas petition. As reasons therefore, the undersigned counsel for the respondents asserts that she was just informed that Petitioner is scheduled for vascular surgery today, following complications with a clotted AV graft (necessary for Petitioner’s dialysis treatments). See Declaration of Patrick Ward (“Ward Decl.”), ¶ 8, attached hereto as **Exhibit A**. For the moment, this surgery will render Petitioner medically unfit for any type of Community Corrections Center or Home Confinement placement.

As a secondary matter, such an extension has the potential to benefit Petitioner, as it will

¹ This motion is not intended to be a responsive pleading. By the filing of this motion, Respondent is not waiving any of the procedural, affirmative, or other waivable and non-waivable defenses available to it in the normal course of filing a responsive pleading. Respondent intends to raise those defenses when it answers or otherwise responds to the habeas petition.

allow counsel and Petitioner's Unit Team at FMC Devens additional time to continue to pursue Home Confinement placement for him.² See attached Ward Decl., ¶¶ 6-7. Specifically, Petitioner recently received medical clearance for pre-release consideration on June 23, 2004, after several months of dialysis treatments three times per week, and cardiac evaluation and procedures. Id. at ¶¶ 5-6. After receiving medical clearance, Petitioner's Unit Team at FMC Devens submitted a recommendation in favor of Home Confinement placement for Petitioner, which, if granted, would begin sometime on or after July 26, 2004. Id. at ¶ 6. At present, Respondents are merely awaiting a decision on the recommendation. Id. at ¶ 7.

WHEREFORE, Respondent respectfully requests that this Court allows its motion for an extension of time **up to and including August 16, 2004**, to answer or otherwise respond to Petitioner's habeas petition.

Respectfully submitted,

RESPONDENT DAVID L. WINN,
By his attorney,

MICHAEL J. SULLIVAN
United States Attorney

/s/ Gina Y. Walcott-Torres
By: Gina Y. Walcott-Torres
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Dated: July 14, 2004

² While there is no guarantee that this recommendation will be granted, and thus no guarantee that Petitioner will be placed in Home Confinement, if the recommendation is granted, this placement would certainly benefit Petitioner and could prove to make this entire habeas petition moot.

CERTIFICATE OF SERVICE

This is to certify that I have this 14th day of July 2004, served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

D'Wayne Carpenter (#05823-016), *pro se*, P.O. Box 879, Ayer, MA 01432

/s/ Gina Y. Walcott-Torres

Gina Y. Walcott-Torres

Assistant United States Attorney

REQUEST FOR WAIVER OF LOCAL RULE 7.1(A)(2) CERTIFICATION

The undersigned counsel hereby requests a waiver of the requirements of Local Rule 7.1(A)(2). As reasons therefore, she asserts that the plaintiff, who is acting *pro se*, is incarcerated at the Federal Medical Center in Devens, Massachusetts.

/s/ Gina Y. Walcott-Torres

Gina Y. Walcott-Torres

Assistant United States Attorney